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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,257	08/22/2006	Stefan Clauss	3753	6037
7590	10/08/2008		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			SAHLE, MAHIDERE S	
			ART UNIT	PAPER NUMBER
			2873	
			MAIL DATE	DELIVERY MODE
			10/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/590,257	CLAUSS ET AL.	
	Examiner	Art Unit	
	MAHIDERE S. SAHLE	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 June 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claims 1-11 are pending in this application.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

Acknowledgement is made of receipt of Information Disclosure Statement(s) (PTO-1449) filed 10/27/06. An initialed copy is attached to this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Murray (USPG Pub No. 2007/0175054).

Regarding claim 1, Murray discloses an optical marking device having at least one light source (16) (see figure 1, paragraph 0023), and having means for generating a first optical projection line on a reference face (paragraph 0024), as well as means for generating a second optical projection line on the same reference face (paragraphs 0024, 0059), and the second

optical projection line forms an angle of 90° with the first projection line (paragraph 0059), characterized in that means are present which generate a third projection line (paragraphs 0058-0059), and the third projection line assumes an angle of 45° to the first optical projection line and an angle of 45° to the second optical projection line (paragraphs 0058-0059).

Regarding claim 2, Murray discloses the first, second, and third projection lines define a plane (see figure 19, paragraph 0059).

Regarding claim 3, Murray discloses the third projection line is an optical projection line (paragraphs 0023, 0058-0059).

Regarding claim 4, Murray discloses that at least one projection line is fanned out perpendicular to the reference plane (paragraphs 0028, 0058-0061).

Regarding claim 5, Murray discloses that the three optical projection lines are generated by at least one light source (16) (paragraph 0059), and in particular by at least one linear laser (paragraphs 0024, 0039).

Regarding claim 6, Murray discloses that the three optical projection lines are generatable by means of a single light source (16), and in particular by means of a single laser signal (paragraph 0059).

Regarding claim 7, Murray discloses that the optical projection lines are generatable by means of at least one optical element (88) from the single light source (16) (paragraphs 0039, 0059).

Regarding claim 8, Murray discloses a tool device (10) having a device as defined by one of claims 1 through 7 (see figure 1, paragraph 0023).

Regarding claim 9, Murray discloses that the device is suspended in the manner of a pendulum laser in a housing (12) of the tool device (10) (paragraph 0045).

Regarding claim 10, Murray discloses that the device is calibratable relative to the housing (12) of the tool device (10) (paragraphs 0042-0043).

Regarding claim 11, Murray discloses that the emission from the optical projection lines is switchable out of the housing (12) of the tool device (10), and in particular is individually switchable (see figure 2, paragraphs 0038-0040, 0058-0059).

Prior Art Citations

Hayes et al. (USPG Pub No. 2006/0137195), Chang et al. (USPG Pub No. 2004/0177523) are each being cited herein to show an optical marking device that would have read on or made obvious a number of the above rejected claims, however, such rejections would have been repetitive.

Response to Arguments

Applicant's arguments filed 06/26/08 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *simultaneous* production of three projections) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAHIDERE S. SAHLE whose telephone number is (571)270-3329. The examiner can normally be reached on Monday thru Thursday 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MSS
09/30/2008

/Ricky L. Mack/
Supervisory Patent Examiner, Art Unit 2873